

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3405-03
Bill No.: HCS for HB 1445
Subject: Sunshine Law, Meetings, and Records; Public Records; Public Meetings
Type: Original
Date: April 22, 2010

Bill Summary: The proposal changes the laws regarding the Open Meetings and Records Law, commonly known as the Sunshine Law.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	(\$245,203 to Unknown)	(\$216,517 to Unknown)	(\$222,860 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$245,203 to Unknown)	(\$216,517 to Unknown)	(\$222,860 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Highway	(\$83,295)	(\$92,531)	(\$95,307)
Various State Funds	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$83,295 to Unknown)	(\$92,531 to Unknown)	(\$95,307 to Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 15 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	3	3	3
Highway	2	2	2
Total Estimated Net Effect on FTE	5	5	5

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Coordinating Board for Higher Education, Office of Administration – Administrative Hearing Commission, – Division of Budget and Planning, Department of Insurance, Financial Institutions, and Professional Registration, Department of Mental Health, Department of Natural Resources, Department of Revenue, Department of Social Services, Department of Public Safety – Missouri Gaming Commission, – Missouri Veterans Commission, – Division of Alcohol and Tobacco Control, – Capitol Police, – Division of Fire Safety, – Missouri State Water Patrol, Department of Conservation, Missouri Ethics Commission, Office of the Lieutenant Governor, State Auditor’s Office, Missouri Senate, Office of the State Public Defender, Parkway School District, Independence School District, Missouri Southern State University, Missouri Western State University, Northwest Missouri State University, and the University of Central Missouri** assume the proposal would have no fiscal impact on their agencies.

In response to a previous version of the proposal (HB 1445, LR # 3405-01), officials from the **Department of Agriculture, Department of Labor and Industrial Relations, Department of Public Safety – State Emergency Management Agency, Office of the Governor, Office of the State Treasurer, Missouri Tax Commission, Special School District of St. Louis County, Lincoln University, Linn State Technical College, Metropolitan Community College of Kansas City, Missouri State University, and Cass County** assumed the proposal would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Missouri House of Representatives** assume the fiscal impact of this legislation is minimal and could be absorbed within existing resources.

Officials from the **Department of Public Safety – Director’s Office (DPS – DIR)** assume the training requirements costs arising from this proposal can be absorbed within existing resources.

DPS – DIR assumes for most requests, DPS will have data processing programs that will provide access to the public under Section 610.023.3. However, there may be certain requests where that is not true. To the extent that DPS – DIR is required to acquire any data processing programs to comply with this provision, DPS – DIR assumes acquisition costs are unknown but would be less than \$100,000.

ASSUMPTION (continued)

In response to a previous version of the proposal (HB 1445, LR # 3405-01), officials from the **Office of Prosecution Services** assumed the proposal would have no measurable fiscal impact the Office of Prosecution Services or county prosecutors.

Officials from the **Office of the Attorney General (AGO)** assume the proposal would require the AGO to provide training to any elected or appointed official who is a member of a public governmental body, which must be administered within one year of assuming responsibilities. Officials holding office prior to January 1, 2010, must take the training by January 1, 2011.

The AGO assumes that a video/DVD of a previously offered Sunshine Law presentation would meet the requirements of this section in the law. If so, the cost to the Office of the Attorney General would be nominal and limited to the cost of filming, duplicating and mailing the video/DVD.

It is unknown how many public officials would be required to receive this training, but the number nears 1,500, before including elected city mayors, city councils and the various other public governmental bodies such as school boards, University Boards of Curators, road districts, public water supply districts, etc.

5 Statewide elected officials
34 State Senators
163 State Representatives
+1,265 County Elected Officials (11 for each of 114 counties and City of St. Louis)
____ (Assessor, Circuit Court Clerk, Collector, Coroner, Prosecuting (Circuit) Attorney,
1,467 Public Administrator, Recorder of Deeds, Sheriff Treasurer, and 3 Commissioners)

The AGO is required to offer the 1-2 hour training at no cost in a video tape (or similar) format. AGO assumes that costs associated with creating and producing a 2 hour video, in addition to creation and mailing of additional video or DVD copies would run approximately \$50,000 for FY11. Once created, additional video copies could be produced in subsequent years at a lesser cost, which AGO estimates at \$5,000 for FY12 and FY13.

AGO assumes that it would need one additional FTE Support Staff to assist in administration of this training. Duties would include, but not be limited to, the following:

- Identifying the members of public governmental bodies who are required to attend Sunshine Law Training;
- Scheduling training in Jefferson City and at other venues across the state;

ASSUMPTION (continued)

- Locating and securing appropriate training facilities;
- Documenting those who have received training and issuing appropriate certification;
- Designating and approving outside agents who are qualified to provide Sunshine Law training;
- Maintaining records of correspondence and responding to inquiries concerning training time, date and location.

The proposal also requires that AGO certify completion of the training. The AGO would need to be able to verify the viewing of the DVD by the public official, most likely by offering a no cost viewing overseen by an AGO employee. The initial training required by these sections would be required to take place during the period August 28, 2010 through January 1, 2011. At a minimum, it would require 115 presentations (one in each of the 114 counties and the City of St. Louis). To meet the statutory deadline, would require 2 FTE Assistant Attorneys General I (at 42,500 per year), each visiting 2-3 counties per week. Related expenses, such as transportation, food, and lodging would also be required. AGO estimates the total cost related to this provision to be \$146,766.

These sections also allow the AGO to certify training offered by other bodies. Depending on the number of requests for certification received, the AGO assumes that any costs associated with providing certification could be absorbed within existing resources, but if there is a significant number of requests for certification over time, the AGO may seek appropriation to adequately implement that provision.

AGO assumes that enforcement of the other aspects of the proposal could be absorbed with existing resources.

Oversight has adjusted Office of the Attorney General cost estimates to include one FTE secretary (at \$27,000 per year), and required equipment and expenses. Oversight has also adjusted AGO cost estimates to reflect equipment purchases only in FY 2011.

In response to a previous version of the proposal (HB 1445, LR # 3405-01), officials from the **Office of Administration – Information Technology Services Division (ITSD)** assumed costs could be incurred by ITSD depending on the type of request that is made for information. ITSD assumes the impact is unknown because there is no way to determine the type of requests that will be made.

ASSUMPTION (continued)

Officials from the **Department of Economic Development** assume, depending on the extent of work involved in preparing the data for public use, any costs that would be incurred would be charged at the current hourly billing rate as determined by Office of Administration – Information Technology Services Division staff.

Officials from the **Department of Elementary and Secondary Education (DESE)** submitted a fiscal estimate provided by Office of Administration – Information Technology Services Division (OA-ITSD) in reference to Sections 610.023 and 610.029:

To provide data access to the general public, the estimated one time cost is approximately \$562,500. Ongoing costs are estimated at \$93,500 which includes an additional 1-FTE at an annual salary of \$45,000 to maintain the system as well as to provide enhancements as new data collections systems are put online or existing systems are changed.

There are currently over 20 data collection processes that are automated at DESE. Most of this data is available for the general public to view currently through the Public Applications area of the web application system or through various spreadsheets and reports available on the DESE public web site. These collections cover several different business areas and result in the primary outputs of payments and reports. The processes to provide these to the general public in a different yet easy to use format would require new hardware and software.

Regarding Section 610.029.2(2), the impact on contract costs will depend upon the meaning of the term “centralized management framework.” DESE’s contract costs could increase anywhere from zero to double or more; there is no way to estimate the potential increase in costs due to the ambiguity of these terms.

DESE defers to the local school districts regarding any impact this proposal may have.

Officials from the **Department of Transportation (MoDOT)** state the proposal changes the penalty for knowing state sunshine law violations from up to \$1,000 to a set \$1,000. It changes purposeful state sunshine law violation penalties from up to \$5,000 to up to \$8,000. Sections 610.040.7 and 610.045.8 state that a certificate of training is admissible “as evidence in a criminal proceeding under this chapter.” MoDOT assumes the proposal would result in increased costs of an Unknown amount.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** assume there is an Unknown cost for DOC if this proposal is passed. DOC assumes OA–ITSD will be addressing this issue on behalf of all the state agencies, and defers to their expertise in this matter however it does appear to DOC that the potential exists for changes to computer programs in order to make them easily accessed and available to the public. Staff may be required in order to monitor public-accessible data regarding confidential offender information. Additional training and recording/transcribing equipment may be necessary, but these requirements and resulting costs are unknown.

Officials from the **Department of Health and Senior Services (DHSS)** assume Sections 610.023 and 610.029 would fiscally impact their department:

DHSS assumes there may be public records stored in various programs that are not easily accessed and manipulated by programs commonly available to the public, and may not be easily transferable to a different format. If there were requests made for this information, ITSD would have to make modifications to the programs in order to make it easily accessible. Due to the nature of the very large databases currently storing DHSS data, it would be very difficult to make this information available to the public in a commonly available program because of the size and complexity of the data files. Most commonly available products will not be equipped to handle the amount of information from these large data systems.

DHSS does not currently store all of its records electronically; therefore, to be able to satisfy the requirement to make any of its public information available in electronic format would require extra assistance to scan records and possibly could take a long period of time. There would be costs associated with this process both in equipment, software, and personnel to transfer the records. In addition, since the law currently requires DHSS to redact the closed portion and make the rest available, almost every record that DHSS has would be affected, as much of the data gathered by DHSS is available to the public in statistical aggregate form or if personal identifiers are removed.

It is unknown at this time how many requests would be made for the information, or what data may be requested. DHSS estimates the fiscal impact to be unknown.

Section 610.027.4 will also have a fiscal impact on DHSS:

The proposed changes in this section could result in increased penalty payments if DHSS were found in violation. DHSS is unable to determine how often this would occur and considers this to be an unknown impact.

ASSUMPTION (continued)

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MSHP)** assume requests will be serviced by the following procedure:

If access is available presently for records viewing at a Patrol facility such as MSHP investigative traffic crash reports, this procedure will continue. Other requests will be processed as follows:

Paper records that do not need redaction will be provided in digitized electronic format compatible with standard commercial software used by the public. Electronic records that need redaction will be provided on electronic media compatible with standard commercial software used by the public. For those records needing redaction, manual redaction will be performed and a digitized image created in response to the request. Requests will be made available to the requester via mail, package delivery service, or pick-up. No on-site or network access, other than what is available now, will be available.

Currently, there is no efficient way to electronically redact data which is a requirement for release of much law enforcement data. To conform with the new language would require the document to be printed, redacted, scanned, and then converted to an electronic format compatible with commonly used programs by the public.

In 2009, the Criminal Justice Information Services Division (CJIS) received approximately 2,600 requests for release of law enforcement information, and each request takes approximately two hours to process. This additional process would double the amount of time it takes to process requests ($2,600 \times 2 = 5,200/2,080 = 2.5$ FTE). In order to administer and/or facilitate these requests, CJIS estimates that two additional FTE Information Analysts (at \$26,784 per year), office/equipment, and related hardware and software would be necessary. MSHP estimates the total cost of the proposal to be \$83,295 in FY 2011, \$92,531 in FY 2012, and \$95,307 in FY 2013.

Officials from **Missouri Consolidated Health Care Plan** assume the provisions in Sections 610.023.3 and 610.029.1, RSMo, could result in an unknown fiscal impact to their agency.

ASSUMPTION (continued)

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this proposal for Administrative Rules is less than \$2,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

Officials from the **Office of the Secretary of State – Missouri State Library** assume public libraries maintain automated catalogs of their holdings that are mounted on a variety of proprietary vender software. Some of the systems allow data output in Excel or other common file structures, but older, more rudimentary systems do not. To comply, libraries would be required to change automation systems, at costs ranging from a few thousand dollars to tens of thousands, depending on the size of library.

In response to a previous version of the proposal (HB 1445, LR # 3405-01), officials from **Truman State University** were unable to determine the fiscal impact on their agency.

Officials from the **City of Centralia** assume the fiscal impact for Section 610.023.3, RSMo, is not predictable. It will depend on a court's interpretation of "accessed and manipulated" as it relates to the proprietary programs such as utility billing, or obsolete program (such as Word Perfect DOS). Officials assume tracking, training, and certificates of course completion for all affected officials and members should be about four hours per year at \$29.65 per hour, for a total of \$118.60 per year.

Officials from the **City of Kansas City (CKC)** assume this legislation will have a negative fiscal impact on CKC because under this legislation, CKC will have to maintain all its records in an electronic database that is easily accessible.

Officials from **St. Louis County** assume the proposal would result in increased costs of approximately \$4,000 if certificates are provided to each employee completing the course. (\$5 per certificate x approximately 800 elected officials, appointees, and board and commission members = \$4,000).

ASSUMPTION (continued)

Oversight assumes state agencies and political subdivisions could experience a fiscal impact due to the provisions in section 610.023.3, which state, “Data-processing programs used by public governmental bodies shall allow for copying of data in a format that is easily accessed and manipulated by programs commonly available to the public,” and the provisions in section 610.029.1. For fiscal note purposes, Oversight has reflected this fiscal impact as (Unknown) to the general revenue fund, various state funds, and to political subdivisions.

Officials from the Office of the Missouri Lottery, Various Missouri Public School Districts, Various Missouri Public Colleges and Universities, Various Missouri Cities, and Various Missouri Counties did not respond to Oversight’s request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
GENERAL REVENUE FUND			
<u>Costs – Office of the Attorney General</u>			
Personal Service	(\$96,133)	(\$118,821)	(\$122,385)
Fringe Benefits	(\$50,412)	(\$62,310)	(\$64,179)
Equipment and Expense	<u>(\$98,658)</u>	<u>(\$35,386)</u>	<u>(\$36,296)</u>
<u>Total Costs – AGO</u>	(\$245,203)	(\$216,517)	(\$222,860)
FTE Change – AGO	3 FTE	3 FTE	3 FTE
<u>Costs – Various state agencies</u>			
Information technology costs (610.023 and 610.029)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$245,203 to Unknown)</u>	<u>(\$216,517 to Unknown)</u>	<u>(\$222,860 to Unknown)</u>
ESTIMATED Net FTE Change for General Revenue Fund	3 FTE	3 FTE	3 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2011	FY 2012	FY 2013
(continued)	(10 Mo.)		

HIGHWAY FUND

<u>Costs – Missouri State Highway Patrol</u>			
Personal Service	(\$45,979)	(\$56,830)	(\$58,535)
Fringe Benefits	(\$28,884)	(\$35,701)	(\$36,772)
Equipment and Expense	(\$8,432)	\$0	\$0
<u>Total Costs – MSHP</u>	<u>(\$83,295)</u>	<u>(\$92,531)</u>	<u>(\$95,307)</u>
FTE Change – MSHP	2 FTE	2 FTE	2 FTE

ESTIMATED NET EFFECT ON HIGHWAY FUND	<u>(\$83,295)</u>	<u>(\$92,531)</u>	<u>(\$95,307)</u>
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Estimated Net FTE Change for Highway Fund	2 FTE	2 FTE	2 FTE
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VARIOUS STATE FUNDS

<u>Costs – Various state agencies</u>			
Information technology costs (610.023 and 610.029)	(Unknown)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2011	FY 2012	FY 2013
	(10 Mo.)		

POLITICAL SUBDIVISIONS

<u>Costs – Various political subdivisions</u>			
Information technology costs (610.023 and 610.029)	(Unknown)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The proposed legislation changes the laws regarding the Open Meetings and Records Law, commonly known as the Sunshine Law. In its main provisions, the bill:

1. Requires all complaints Missouri Ethics Commission to be open records except for any investigative reports prepared by commission employees regarding complaints until a decision is rendered and any reports of complaints that the commission dismisses. On the motion of any party, the commission, upon good cause shown, will close any record to be introduced at a hearing (Section 105.961);
2. Requires the minutes to reflect a summary of the discussions that occurred at a closed meeting but not the disclosure of records or votes that are properly closed under Section 610.021, RSMo (Section 610.020);
3. Specifies that only members of a public governmental body, their attorneys and staff assistants, and any necessary witnesses will be permitted in any closed meeting of the governmental body (Section 610.022);
4. Requires information to be made available in an electronic format if a public body keeps records in an electronic format. Data must be available for copying in a format easily accessible to the public if it is stored in a data-processing program. Certain hospitals will not be compelled to violate their licensing agreements involving proprietary data-processing systems for financial or patient medical record information (Sections 610.023 & 610.029);
5. Requires the governing body of any city, county, town, or village or any entity created by these political subdivisions to hold a public meeting and to allow public comment five business days prior to voting on an issue involving fee or tax increases, eminent domain, zoning, transportation development districts, capital improvement districts, commercial improvement districts, or tax increment financing (Section 610.020);
6. Specifies that in any legal proceeding, there will be a presumption that a meeting, record, or vote is open to the public. The burden to prove that it should be closed is on the public governmental body (Section 610.027); and

FISCAL DESCRIPTION (continued)

7. Requires any elected or appointed official, or their designated public information coordinator, who is a member of a public governmental body subject to the Sunshine Law to complete a course of training regarding the responsibilities of the body and its members on the Open Meetings Law by the Office of the Attorney General at no cost. The course must be taken by the individual within 90 days of taking the oath of office or assuming his or her responsibilities. Individuals holding office prior to January 1, 2010, must complete the training by January 1, 2011 (Sections 610.040 & 610.045).

This legislation is not federally mandated, would not duplicate any other program, and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General
Department of Agriculture
Coordinating Board for Higher Education
Office of Administration

- Administrative Hearing Commission
- Division of Budget and Planning
- Information Technology Services Division

Office of State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
Department of Transportation
Department of Insurance, Financial Institutions, and Professional Registration
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Department of Public Safety

- Missouri State Highway Patrol
- Director's Office
- Missouri Gaming Commission
- State Emergency Management Agency

SOURCES OF INFORMATION (continued)

- Missouri Veterans Commission
- Division of Alcohol and Tobacco Control
- Capitol Police
- Division of Fire Safety
- Missouri State Water Patrol

Office of the Governor
Missouri Consolidated Health Care Plan
Department of Conservation
Missouri Ethics Commission
Missouri House of Representatives
Office of the Lieutenant Governor
Office of Prosecution Services
State Auditor's Office
Missouri Senate
Office of the Secretary of State
Office of the State Public Defender
Office of the State Treasurer
Missouri Tax Commission
Independence School District
Parkway School District
Special School District of St. Louis County
Lincoln University
Linn State Technical College
Metropolitan Community College of Kansas City
Missouri Southern State University
Missouri State University
Missouri Western State University
Northwest Missouri State University
Truman State University
University of Central Missouri
City of Centralia
City of Kansas City
Cass County
St. Louis County

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NOT RESPONDING

Office of the Missouri Lottery, Various Missouri Public School Districts, Various Missouri Public Colleges and Universities, Various Missouri Cities, and Various Missouri Counties

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
April 22, 2010